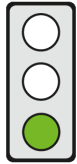


KEY ISSUES

Objective of the Regulation: Security of the electricity supply is to be increased by obliging Member States to undertake closer cooperation to avoid and manage electricity crises.

Affected parties: Private and commercial electricity consumers, electricity suppliers and network operators



Pro: (1) The duty to provide regional support in the event of an electricity crisis may help to ensure that severe economic damage is avoided in individual Member States.

(2) The fact that Member States will receive compensation for measures taken to manage electricity crises in other Member States counteracts free-riding.

(3) The duty to manage electricity crises primarily with measures which are compatible with the internal electricity market facilitates efficient pricing on the wholesale electricity market.

Contra: –

CONTENT

Title

Proposal COM(2016) 862 of 30 November 2016 for a **Regulation on risk-preparedness in the electricity sector** and repealing Directive 2005/89/EC

Brief Summary

► Context and objectives

- The Directive on security of the electricity supply (2005/89/EC) currently in force contains a rough framework of objectives to be achieved by the Member States in the area of security of the electricity supply. It is to be replaced by the Regulation on security of the electricity supply [COM(2016) 862] now being proposed.
- An “electricity crisis” exists in a Member State where there is a “significant electricity shortage” or electricity cannot be supplied to the end-consumer due to damage to the electricity infrastructure (Art. 2 (2)).
- The causes of electricity crises include extreme weather conditions, cyber-attacks and fuel shortages (p. 2).
- Member States currently take different approaches to preventing and managing electricity crises.
- In future, Member States will be obliged to increase cooperation at regional level on measures to manage cross-border electricity crises (p. 3).
This refers to
 - the assessment of risks to the electricity supply,
 - establishment of risk-preparedness plans,
 - managing electricity crises and
 - ex-post evaluation of electricity crises.

► Assessment of risks to the electricity supply

- In future, on the proposal of the European Network of Transmission System Operators (ENTSO-E), the EU Agency for the Cooperation of Energy Regulators (ACER) will have to establish cross-border “system operation regions” [Art. 33 COM(2016) 861].
- Within ten months after entry into force of the Regulation, ENTSO-E must determine – on the basis of its own methodology developed in advance – the “most relevant electricity crisis scenarios” for each system operation region (Art. 6 (1) in conjunction with Art. 5 (1)).
- Within ten months of entry into force of the Regulation, Member States must (Art. 7)
 - identify the most relevant electricity crisis scenarios at the national level, in line with the risk assessments from ENTSO-E, and
 - inform the Commission and the Electricity Coordination Group,
 - of the extent to which the ownership of critical infrastructure could jeopardise the security of supply and
 - of the measures that have been taken to prevent or mitigate such risks.

The “Electricity Coordination Group” is a permanent committee of experts which advises the Commission on measures to increase security of the electricity supply in the European electricity market (see [cepCompass EU Energy and Climate Policy](#)).

► Establishment of risk-preparedness plans

- Within three months of entry into force of the Regulation, each Member State must appoint precisely one authority to establish a risk-preparedness plan (“competent authority”, Art. 3 (1)).
- The competent authority must develop a risk-preparedness plan which (Art. 10 (1) - (3)).
 - is established in accordance with a template provided by the Commission,
 - is drawn up on the basis of the regional and national electricity crisis scenarios and
 - takes account of the opinions and recommendations of energy companies, private households, commercial electricity consumers, other Member States in the region and the Electricity Coordination Group.
- The risk-preparedness plan must identify, in particular, (Art. 11)
 - the risks to the electricity supply relevant to the Member State and to the region,
 - the role and responsibilities of the competent authority,
 - the measures available to manage electricity crises that do not interfere with pricing on the internal electricity market (“market-based measures”),
 - the circumstances under which measures may be taken which do interfere with pricing on the internal electricity market (“non-market measures”),
 - which electricity consumers are to receive special protection in the event of measures to manage electricity crises – such as disconnection of individual network areas (“load shedding”) – and
 - how the public is to be informed about an electricity crisis.
- National risk-preparedness plans must contain regional measures to prevent cross-border electricity crises. (Art. 12 (1)).
- Where the competent authorities are unable to agree on joint regional measures in the risk-preparedness plans, they must notify the Commission of the reasons (Art. 12 (1)).

► Managing electricity crises

- As soon as a competent authority has reliable information that there could be a significant deterioration of the electricity supply in the country, it must, without undue delay, give an early warning to the Commission and the Electricity Coordination Group.
- As soon as an electricity crisis occurs in a Member State, its competent authority must inform the neighbouring Member States and the Commission without undue delay (Art. 13 (2)).
- Where an electricity crisis is expected or occurs, the competent authority must provide information about (Art. 13 (2))
 - its causes,
 - measures taken and planned and
 - the need for assistance from other Member States.
- Member States must act and cooperate in a spirit of solidarity in order to prevent and manage electricity crises, so that, in a time of crisis, electricity “is delivered where it is most needed” (Art. 14 (1)).
- Member States must provide other Member States with “compensation” for their assistance during an electricity crisis (Art. 14 (2)).
- Measures to prevent or manage electricity crises must be consistent with the rules governing the internal electricity market (“market-based measures”, Art. 15 (1)).
- Non-market-based measures may be activated in a crisis situation only where (Art. 15 (2))
 - they are necessary, proportionate and non-discriminatory,
 - they are only temporary and
 - all options provided by the market have already been exhausted.

► Ex-post evaluation of electricity crises

- No later than six weeks after declaring an electricity crisis, the competent authority must provide the Commission and the Electricity Coordination Group with an evaluation report (Art. 16 (1)).
- The evaluation report must at least include the following information (Art. 16 (2)):
 - the event that triggered the electricity crisis,
 - a description and an assessment of the preventative and mitigating measures,
 - the cross-border impact of the measures taken,
 - the assistance provided by other countries and
 - the economic impact of the electricity crisis.

Main Changes to the Status Quo

- New: the fact that the competent authority responsible for security of the electricity supply in each Member State must establish national risk-preparedness plans and coordinate these at a regional level.
- New: the fact that Member States must cooperate in a spirit of solidarity in order to prevent and manage electricity crises.

Statement on subsidiarity by the Commission

Electricity crises are often not confined to individual Member States. Measures to prevent and manage them should therefore be taken at EU level. Furthermore, uncoordinated national approaches can exacerbate the consequences of a crisis. (p. 5)

Policy Context

This proposal for a Regulation is part of a comprehensive energy package which also contains a recast of the Internal Electricity Market Regulation [COM(2016) 861; see [cepPolicyBrief 14/2017](#)], containing additional provisions of relevance to the security of the electricity supply. These include the rules on the future use of capacity mechanisms whereby the provision of secure power plant capacity is remunerated irrespective of the actual amount of electricity generated by a power plant [COM(2016) 861, Art. 18 et seq.] as well as the rules on establishing “Regional Operational Centres” (ROCs) which have to coordinate network operations in an specified system operation region [COM(2016) 861, Art. 32 et seq.].

The Energy Package also contains recasts of the Regulation on the EU Energy Agency ACER [COM(2016) 863; see [cepPolicyBrief 19/2017](#)] and the Internal Electricity Market Directive [COM(2016) 864, see [cepPolicyBrief 09/2017](#)] and changes to the Renewable Energy Directive [COM(2016) 767, see [cepPolicyBrief 07/2017](#)], the Energy Efficiency Directive [COM(2016) 761, see [cepPolicyBrief 01/2017](#)] and the Energy Performance of Buildings Directive [COM(2016) 765, see [cepPolicyBrief 06/2017](#)].

Legislative Procedure

| | |
|------------------|--|
| 30 November 2016 | Adoption by the Commission |
| Open | Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force |

Options for Influencing the Political Process

| | |
|--|--|
| Directorates General: | DG Energy (leading) |
| Committees of the European Parliament: | Industry, Research and Energy (leading), Rapporteur: Flavio Zanonato (S&D, I) |
| Federal Ministries: | Economic Affairs and Energy (leading) |
| Committees of the German Bundestag: | Economic Affairs and Energy (leading) |
| Decision-making mode in the Council: | Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population) |

Formalities

| | |
|---------------------------------|--|
| Legislative competence: | Art. 194 TFEU (Energy) |
| Form of legislative competence: | Shared competence (Art. 4 (2) TFEU) Legislative procedure: |
| Legislative procedure: | Art. 294 TFEU (ordinary legislative procedure) |

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The Commission rightly calls for closer cooperation and coordination between Member States to prevent and manage electricity crises because, firstly, the Member States of a region, e.g. in the case of extended periods of cold or heat, or due to geopolitical conflicts with third countries, are often affected simultaneously by electricity crises. Secondly, due to increasing cross-border interconnection, uncoordinated measures to prevent or manage electricity crises in one country can affect the flow of electricity within the internal market and jeopardise security of supply in neighbouring Member States.

Impact on efficiency and individual freedom of choice.

The duty of Member States to designate precisely one competent authority results in clear areas of competence and responsibility. In addition, it facilitates communication between authorities and thus also regional coordination of measures to avoid and manage electricity crises.

Risk-preparedness plans established according to a uniform template can be compared more easily and thus make it easier for authorities in a region to take a coordinated approach in the avoidance and management of electricity crises.

The Regulation should specify the consequences arising where the competent authorities in a region fail to agree on joint measures in the risk-preparedness plans. Otherwise, there is a risk that an agreement will be obstructed on purpose in order to avoid regional cooperation to prevent or manage electricity crises.

The duty to provide regional cooperation and support in the event of an electricity crisis – e.g. in the form of cross-border electricity supplies – **may help to ensure that severe economic damage** or even a humanitarian disaster **is avoided in individual Member States** in the event of an electricity crisis. The basic requirement for mutual assistance must, however, be sufficient capacity to meet a country's own needs as otherwise there is a danger that some Member States will fail to ensure sufficient capacity for their own needs in the expectation of solidarity from neighbouring Member States in the event of a crisis ("free-riding"), which will have the overall effect of reducing security of the electricity supply in the region.

The rule that, in return for assistance in managing electricity crises in other Member States, a Member State has to receive compensation from the former, **counteracts free-riding** and thereby increases the security of the electricity supply in a region. The term "compensation" is too unspecific however. **The Regulation should clarify that the compensation must at least correspond to the costs incurred by the Member State** in providing the assistance.

The duty to prevent and manage electricity crises primarily with measures which are consistent with the internal electricity market, facilitates efficient electricity generation because intervention in the internal electricity market restricts the flow of electricity, prevents **efficient pricing on the wholesale electricity markets** and thus makes the electricity supply unnecessarily expensive.

Impact on growth and employment

A prosperous economy requires a secure electricity supply. Measures to increase security of the electricity supply therefore have a positive impact on growth and employment.

Impact on Europe as a business location

A secure electricity supply is essential for high-quality industrial output. Measures to increase security of the electricity supply therefore increase Europe's attractiveness as a business location for industrial companies.

Legal Assessment

Legislative Competency

Unproblematic. The EU can take measures to ensure security of the energy supply (Art. 194 (1) (b) TFEU).

Subsidiarity

Unproblematic. EU-wide legislation on the electricity supply is more effective at EU level (Art. 5 (3) TEU).

Compatibility with EU Law in other Respects

The fact that Member States are only required to entrust the establishment of a risk-preparedness plan to a single "competent authority", constitutes intervention in the internal organisational sovereignty of the Member States in violation of EU law. Any centralisation should therefore be kept to the level necessary e.g. in order to designate authorities as the central point of contact at EU level.

Conclusion

The duty to provide regional support in the event of an electricity crisis may help to ensure that severe economic damage is avoided in individual Member States. The rule that Member States receive compensation for assistance in managing electricity crises in other Member States counteracts free-riding. The Regulation should, however, clarify that the compensation must at least correspond to the costs incurred by the Member State. The duty to manage electricity crises primarily with measures which are compatible with the internal electricity market facilitates efficient pricing on the wholesale electricity market.